

From: ["Miller, Clay" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=4DF9218D19F543219815DA51F7685C31-CMILLE03>](#)
To: [Kaiser](#)
["Russell; Downing"](#)
[Donna](#)
CC:
Date: 3/23/2015 12:48:44 PM
Subject: FW: Climax mine / McNulty Gulch
Attachments: [McNulty Gulch \(Climax\) JD cover letter.eml](#)
[FW ELG and wastewater exemption at Climax mine - alert.eml](#)
[FW Ore Mining and Dressing effluent guidelines.eml](#)
[FW Response from Colorado AG, via CDPHE re McNulty gulch.eml](#)

Russ/Donna – I understand that since this was a JD issue that you have been engaged or working with R8 on this matter. Forwarding this to you for appropriate action. Note – that there is a chance that Ken will be contacted by the Climax on this matter and that if he doesn't know anything concerning this issue it might be good to get info up to him so he isn't blindsided. Thanks Clay

From: Best-Wong, Benita
Sent: Monday, March 23, 2015 9:35 AM
To: Miller, Clay
Cc: Kaiser, Russell; Landers, Timothy
Subject: FW: Climax mine / McNulty Gulch

Clay,
Climax may be contacting Ken about this decision. I spoke with Bert about this on Friday. I have already received a call from a consultant that represents the company.
Thanks,
Benita
Sent from my Windows Phone

From: [Garcia, Bert](#)
Sent: 3/20/2015 3:44 PM
To: [Best-Wong, Benita](#)
Cc: [Hamilton, Karen](#)
Subject: Climax mine / McNulty Gulch

Benita,

Here is a set of emails pertaining to the Climax Mine JD. The mining company plans to expand a waste rock dump and believes the waters that will be impacted fall under the waste treatment system exclusion. On January 29 we sent USACE a letter responding to their questions for us about significant nexus and the waste treatment system exclusion. The JD was issued by USACE March 6, concluding these are WOTUS. Both our January 29 letter and USACE's JD March 6 cover letter are attached.

We've been working these questions with Gary Hudiburgh, Donna Downing, and Ronald Jordan. Here's the text of a note Karen sent them March 6. I know Donna's been focused on the CWR, so it's understandable that this hasn't gotten much attention there.

"I am notifying you that Climax mine may contact OW management about our evaluation of their arguments that the wetlands adjacent to their ditches carrying contaminated water are exempt from 404 because they are part of the waste treatment system. The letter is attached.

We expect the JD today so that should render the call to EPA moot. Climax may call anyway so you may wish to notify your management. Until I see the JD, I cannot predict what the Corps' JD will indicate. I will keep you informed regarding the JD findings."

I suspect that the mine company's interest in contacting you is to changing the thinking about the waste treatment system exclusion. That's been well vetted among OW programs, OGC, and the Region.

Let us know if there's more you'd like to talk about on this. Thanks.

Bert

From: ["Hamilton, Karen" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON, KAREN>](mailto:)
To: [Garcia](#)
[Bert](#)
CC:
Date: 3/20/2015 12:37:21 PM
Subject: McNulty Gulch (Climax) JD cover letter
Attachments: [\[Untitled\].pdf](#)

Of course we were also engaged with OGC (Alexis Wade), who crafted the letter I sent on 1/29/2015. Erin Flannery-Smith was also involved from the 402 angle.

From: ["Hamilton, Karen" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON, KAREN>](#)
To: [Garcia](#)
[Bert](#)
CC:
Date: 3/20/2015 12:30:17 PM
Subject: FW: ELG and wastewater exemption at Climax mine - alert
Attachments: [Climax JD review letter to Corps 1 2015.pdf](#)

From: Hamilton, Karen

Sent: Friday, March 06, 2015 11:19 AM

To: Hudiburgh, Gary; Downing, Donna; Jordan, Ronald

Subject: ELG and wastewater exemption at Climax mine - alert I am notifying you that Climax mine may contact OW management about our evaluation of their arguments that the wetlands adjacent to their ditches carrying contaminated water are exempt from 404 because they are part of the waste treatment system. The letter is attached. We expect the JD today so that should render the call to EPA moot. Climax may call anyway so you may wish to notify your management. Until I see the JD, I cannot predict what the Corps' JD will indicate. I will keep you informed regarding the JD findings.



From: ["Hamilton, Karen" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON.KAREN>](mailto:Hamilton.Karen@EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON.KAREN)
To: [Garcia](#)
[Bert](#)
CC:
Date: 3/20/2015 12:25:15 PM
Subject: FW: Ore Mining and Dressing effluent guidelines

From: Perkins, Erin
Sent: Tuesday, March 03, 2015 8:45 AM
To: Garcia, Bert; Hamilton, Karen
Subject: FW: Ore Mining and Dressing effluent guidelines Hi – FYI below re. ELG and Climax mine. I've printed a copy for Joan.

From: Hudiburgh, Gary
Sent: Thursday, November 20, 2014 11:55 AM
To: Jordan, Ronald
Cc: Perkins, Erin; Flannery-Keith, Erin
Subject: RE: Ore Mining and Dressing effluent guidelines [Thank you.](#) **From:** Jordan, Ronald
Sent: Thursday, November 20, 2014 1:12 PM
To: Hudiburgh, Gary
Subject: Ore Mining and Dressing effluent guidelines Gary,

You recently contacted me about the effluent limitations guidelines for the ore mining and dressing point source category. Specifically, you inquired about the treatment system at a facility described in the development document on pages 285-287 ("Molybdenum Mine/Mill 6102").

I reviewed the development document for the rule promulgated in 1982 (i.e., the document cited by the company that owns the mill) and the Federal Register notices for the proposed and final 1982 rule. Based on the information in these documents, there is no basis for considering adjacent wetlands to be part of the existing treatment system.

The development document provides a thorough description of the treatment system. For example, page 43 of the document states that the "operation uses a complex treatment system including settling, recycle, ion exchange, electrocoagulation flotation, alkaline chlorination and mixed-media filtration." The treatment at the facility is described in more detail on pages 285-287 as a "system of tailing ponds, impoundment, and extensive recycle" and "ion exchange for molybdenum removal, electrocoagulation flotation removal of heavy metals, alkaline chlorination for the destruction of cyanide, and mixed media filtration." The information in the development document is consistent with the description included in the Federal Register notice for the proposed rule (see 47 FR 25686; June 14, 1982). There is no suggestion in these documents that adjacent wetlands that may be present were considered to be part of the treatment system at the facility.

Please let me know if you have further questions.

Ron

Ron Jordan
USEPA Office of Water
Engineering and Analysis Division
Washington DC
(202) 566-1003

From: ["Hamilton, Karen" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON.KAREN>](mailto:Hamilton.Karen@state.co.us)
To: [Garcia](#)
[Bert](#)
CC:
Date: 3/20/2015 12:26:57 PM
Subject: FW: Response from Colorado AG, via CDPHE re: McNulty gulch

From: Garcia, Bert
Sent: Monday, March 16, 2015 3:09 PM
To: Hamilton, Karen; Card, Joan; Perkins, Erin; Ott, Toney
Subject: Response from Colorado AG, via CDPHE re: McNulty gulch FYI.

Bert Garcia

Director, Ecosystems Protection Program

EPA Region 8

From: Kieler - CDPHE, Janet [<mailto:janet.kieler@state.co.us>]
Sent: Friday, March 13, 2015 7:43 AM
To: Garcia, Bert
Cc: Dick Parachini - CDPHE; Annette Quill

Subject: mcnulty gulch Hi Bert. Following receipt of your letter the Attorney General's Office conducted a review of the documents provided by Climax in October 2014, focusing on Climax's 2013 CDPS Permit and associated Fact Sheet. Upon review, the AG's Office has concluded that there is nothing in the 2013 CDPS Permit or associated Fact Sheet that contradicts the Corps/EPA's recent "jurisdictional" determination for McNulty Gulch.

Janet

Janet Kieler

Permits Section Manager

Clean Water Program

P 303.692.3599

4300 Cherry Creek Drive South, Denver, CO 80246

janet.kieler@state.co.us | www.coloradowaterpermits.com